

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Huntington National Bank,
successor-by-merger to TCF National
Bank,

Civil No. 21-2059 (DWF/TNL)

Plaintiff,

v.

Alliance Acceptance Corp., *doing
business as Alliance Acceptance Group*,
and Suzanne Burg,

Defendants.

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER FOR ENTRY
OF DEFAULT JUDGMENT**

This matter was heard before the undersigned on April 8, 2022 upon Plaintiff Huntington National Bank's, successor-by-merger to TCF National Bank, ("Plaintiff" or "Creditor") Motion for Default Judgment against Defendants Alliance Acceptance Corp, doing business as Alliance Acceptance Group ("Alliance" or "Debtor"), and Suzanne Burg ("Burg" or "Guarantor"), (together, "Defendants"). (Doc. No. 13.)

Having considered the motion and supporting papers and based upon on all the files, records, and proceedings herein, the Court makes the following findings of fact.

FINDINGS OF FACT

1. On or about March 26, 2021, Alliance purchased certain software and equipment. (Doc. No. 1 ("Compl.") ¶ 7, Ex. A.) To facilitate this purchase, Alliance and TCF National Bank entered into an Installment Payment Agreement ("IPA"). The IPA set forth the terms of a loan, with a financed amount of \$417,103.14, which enabled

Debtor to purchase the software and equipment. (*Id.* ¶ 8, Ex. B.) The IPA provided that Debtor was required to make monthly payments of \$8,158.66 over 60 months and provided other rights and remedies to the Creditor. (*Id.* ¶¶ 9-14.) The IPA also entitled Creditor to obtain fees, costs, and expenses associated with exercising its rights and remedies, including costs of obtaining money damages and attorneys’ fees and expenses for any purpose related to the IPA. (*Id.* ¶ 15.)

2. The IPA was secured by, among other things, a continuing guaranty from Guarantor Burg in favor of the Creditor (“Guaranty”).¹ (*Id.* ¶ 23; Ex. E.) The Guaranty provided an unconditional and absolute guaranty of the full and proper payment of all obligations of the Debtor due under the IPA, and provided an obligation to pay all costs, fees, and expenses incurred by Creditor in connection with enforcing the Guaranty and other obligations of the Debtor. (*Id.* ¶¶ 24-25.)

3. Debtor defaulted under the IPA by failing to make required payments in a timely fashion. Creditor provided notice of default to Debtor and Guarantor by letter dated August 20, 2021. Debtor and Guarantor failed to cure the default. As a result, Creditor provided another notice of default and acceleration to Debtor and Guarantor by letter dated September 9, 2021. (¶¶ 30-33; Exs. I and J.) Defendants remain in default under the Credit Agreements.

¹ The IPA and Guaranty (Compl. Exs. B and E), together with other agreements between the parties related thereto, are referred to collectively hereafter as the “Credit Agreements.”

4. As of January 14, 2022, the total amount due from Defendants to Plaintiff under the Credit Agreements, exclusive of additional accruing interest charges, attorneys' fees, and other applicable costs, fees, and expenses, was \$435,813.84. (Doc. No. 16 ¶ 5.)

5. On or about September 17, 2021, Huntington filed its Complaint in this Court, asserting claims against Defendants for breach of contract (Counts I and II), claim and delivery (Count III), priority (Count IV), and alternative equitable claims (Counts V and VI). (*See* Compl.)

6. Defendants did not answer, respond, or otherwise appear in this action.

7. On December 14, 2021, Huntington filed for entry of default. (Doc. No. 8.)

8. On December 16, 2021, the Clerk of Court entered default against Defendants. (Doc. No. 11.)

9. Plaintiff has thus far incurred attorneys' fees and costs in the amount of \$13,352.60. (Doc. Nos. 17, 20.)

Based on the foregoing findings of fact, the Court now makes the following conclusions of law.

CONCLUSIONS OF LAW

1. Having failed to answer or otherwise respond to the Complaint within the time required by Fed. R. Civ. P. 12(b), the Defendants are in default.

2. Entry of default judgment in favor of Plaintiff and against the Defendants on all counts in the Complaint is warranted under Fed. R. Civ. P. 55(b)(2).

3. Defendants are jointly and severally liable in the amount of \$435,813.84 in monetary damages, exclusive of attorneys' fees, costs, and expenses, which is hereby awarded to Plaintiff.

4. Defendants are also jointly and severally liable for Plaintiff's attorneys' fees and expenses in the amount of \$13,352.60, which the Court finds reasonable and necessary under the circumstances, plus any additional costs and any attorneys' fees incurred hereafter, which are recoverable under the subject Credit Agreements at issue in this action.

Based on the foregoing findings of fact and conclusions of law and on all the files, records, and proceedings herein, and the Court otherwise being duly advised of the record, **IT IS HEREBY ORDERED** that:

1. Plaintiff's motion for entry of default judgment on Counts I-VI of the Complaint against (Doc. No. [13]) is **GRANTED**.

2. Defendants are jointly and severally liable in the amount of \$435,813.84 in monetary damages, exclusive of attorneys' fees, costs, and expenses, which is hereby awarded to Plaintiff.

3. Defendants are jointly and severally liable for Plaintiffs' attorneys' fees and expenses in the amount of \$13,352.60 plus any additional costs and any attorneys' fees incurred hereafter, which are recoverable under the subject Credit Agreements at issue in this action, and hereby awarded to Plaintiff in addition to the amounts awarded above.

4. Plaintiff shall be entitled to applicable post-judgment interest at the maximum rate allowed by law.

5. The Clerk of Court is directed to enter judgment in favor of Plaintiff and against Defendants in the total amount of \$449,166.44 in accord with this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 11, 2022

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge